IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

JUDGMENT

S.B. Civil Sales Tax Revision No.195/2004

Commercial Taxes Officer, Anti Evasion, Bhilwara.

vs.

M/s. Bhilwara Spinners Ltd.

Date : 4.4.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sangeet Lodha, for the petitioner.

Mr. Ramit Mehta, for the respondent.

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BY THE COURT :

REPORTABLE

Heard learned counsel for the parties.

The present revision has been preferred by the revenue against the order of the Tax Board dated 4.6.2003.

Brief facts of the case are that the respondent assessee – manufacturer of polyester yarn, purchased

diesel as raw material after paying 3% tax under Section 10(1) of the Rajasthan Sales Tax Act, 1994 (for short 'the RST Act'). It is not in dispute that the diesel has been entered as raw material in the assessee's relevant registration certificate by which he can purchase the raw material on concessional rate of tax. The assessing authority, despite this entry in the registration certificate, was of the view that the diesel so purchased by the assessee was not raw material and hence, the assessee could not have purchased it on payment of concessional rate of tax ; at the rate of 3%. The assessing authority, therefore, levied the differential tax of 1% along with interest and imposed penalty over tax for the assessment year 1996-1997. The assessee also purchased packing material against the declaration ST 17 without paying any tax and used it as packing material for the yarn and fabric manufactured and sold by them. The assessing authority felt that the assessee was liable to pay tax on the implied sale of packing material and, therefore, the assessing authority assessed the tax, levied interest and imposed penalty on the deemed sale of packing material.

The assessee being aggrieved by the order of the assessing authority dated 15.4.2002, preferred appeal before the Dy. Commissioner (Appeals), Commercial

Taxes, Ajmer. The appellate authority by order dated 24.8.2002 allowed the assessee's appeal and held that the assessee rightly paid the tax at the rate of 3% under Section 10(1) of the RST Act on purchase of diesel. For the packing material also, the assessee's contention was accepted by the appellate authority and the order of the assessing authority dated 15.4.2002 so far as it related to those two issues are concerned, was set aside.

The revenue preferred further appeal against the order dated 24.8.2002 before the Tax Board, Ajmer which was dismissed. Hence, this revision by the revenue.

Learned counsel for the petitioner/revenue pointed out that the controversy with respect to interpretation, whether the diesel is raw material or not itself came up before this Court in SB Civil Sales Tax Revision No.6/2005 (Commercial Taxation Officer, Udaipur vs. Rajasthan Taxchem Ltd.) decided by this Court vide order dated 4.3.2005 (by me). The decision of this Court was challenged by preferring special appeal before the Hon'ble Supreme Court by the Revenue which was dismissed by the judgment dated 12.1.2007 delivered in Commercial Taxation Officer, Udaipur vs. Rajasthan Taxchem Ltd. reported in (2007) 5 VST 529 (SC). However, according to learned counsel for the

petitioner, the provision of Section 10(3) of the RST Act was not brought to the notice of this Court when this Court decided the case of Rajasthan Taxchem Ltd. (supra) nor it was brought to the notice when earlier decisions of this Court were given against the revenue in the cases referred in Rajasthan Taxchem Ltd. (supra) decided by this Court. Not only this, but Section 10(3) was not brought to the notice of Hon'ble Apex Court when Rajasthan Taxchem's case (supra) was decided by the Hon'ble Apex Court.

According to learned counsel for the revenue, Section 10(1) of the Act of 1994 very clearly provides that notwithstanding anything contained in Section 4 but subject to such restrictions and conditions as may be prescribed, the rate of tax payable on the sale to or purchase by a registered dealer of any raw material for the manufacture in the State of goods for sale by him within the State or in the course of inter-State trade or commerce or in the course of export outside the territory of India shall be at such concessional rate as may be notified by the State Government. But as per Sub-section (2), the tax exemption can be claimed when such raw material purchased under sub-section (1) is utilised by the dealer for the purchase specified in sub-section (1) otherwise, the assessee is liable to pay the difference of the amount of tax which would

have been liable at full rate and further, he is liable to pay interest over the said tax at the rate of 2% per month. The distinction which, according to learned counsel for the revenue, was not noticed is that under sub-section (3), it has been specifically provided that the dealer purchasing the articles and required by him for use in the manufacture and processing of the goods for sale or in mining or in generation or distribution of electricity are taxable at the rate of 4%.

Learned counsel for the petitioner/revenue pointed out that a specific provision has been made for taxing the particular articles which may be required by dealer in generation or distribution of electricity and the diesel admittedly purchased and was used for generation of electricity by the assessee, application of Section 10(1) stands excluded by Sub-Section (3) of Section 10. Learned counsel for the petitioner vehemently submitted that since this question was not considered and decided by this Court or by the Hon'ble Apex Court in Rajasthan Taxchem's case (supra), than said judgment cannot be applied to the facts of the present case.

Learned counsel for the respondent pointed out that the diesel has been clearly mentioned in the registration certificate of the dealer as raw material

and the Hon'ble Apex Court held that an entry made in the registration certificate is conclusive unless it is set aside by the competent authority and, therefore, diesel is raw material in the light of the entry in the registration certificate of the assessee and in view of the decision of the Hon'ble Apex Court as well as from the very nature of diesel, it is used in the process of manufacture, hence, is raw material.

Learned counsel for the respondent/assessee has further drawn attention to the definition of raw material as given in Section 2(34) of the Act of 1994 wherein the fuel and lubricant required for the process of manufacture have been included in the definition of raw material, therefore, the diesel is a raw material and Section 10(1) of the Act of 1994 specifically entitled the dealer to purchase the raw material as defined under the Act of 1994 itself at concessional rate and Section 10(3) covers the articles which are not raw materials and raw materials have been specifically excluded from the application of Section 10(3) of the Act of 1994 by the same Section itself because it is covered under Section 10(1).

I considered the submissions of learned counsel for the parties and perused the reasons given by the Tax Board as well as relevant provisions of law,

referred above.

Undoubtedly, the raw material has been defined by the Act of 1994. Section 2(34) of the Act of 1994 is as under :-

> "2(34). "raw material" means goods used as an ingredient in the manufacture of other goods and includes preservative, fuel and lubricant required for the process of manufacture."

Sub-sections (1) and (3) of Section 10 of the Act of 1994, which are relevant for the purpose, are as under :-

> "(1) Notwithstanding anything contained in Section 4, but subject to such restrictions and conditions as may be prescribed, the rate of tax payable on the sale to or purchase by a registered dealer of any raw material for the manufacture in the State of goods for sale by him within the State or in the course of inter-State trade or commerce or in the course of export outside the territory of India shall be at such concessional rate as may be notified by the State Government.
>
> (3) Notwithstanding anything contained in Section 4, and subject to such conditions and restrictions as may be prescribed, sale to or purchase by a registered dealer of articles (other than raw material) specified in the certificate of registration of the registered dealer purchasing

> the articles and required by him for use in the manufacture and processing of goods for sale or in mining or in generation or distribution of electricity shall, unless the articles are taxable at the lower rate, be liable to tax at four percent on the condition that the dealer selling the articles shall furnish to the assessing authority in the prescribed manner, a prescribed declaration duly filled and signed by the registered dealer to whom the articles are sold." (emphasis supplied)

A perusal of Sub-section (1) makes it clear that the dealer can purchase the raw material for the purpose mentioned in Sub-Section (1) of Section 10 on payment of tax at concessional rate as notified by the State Government. Raw material has been included in Sub-section (1) specifically as commodity which may be purchased on payment of tax as provided under Section 10(1) of the Act of 1994, provided it is utilised by the dealer for the purpose of manufacture of goods within the State and for sale within the State or sale by him in the course of inter-state trade or commerce or in the course of export outside the territory of India. Therefore, from a bare reading of sub-section (1), it is clear that a dealer is entitled to purchase the raw material which includes fuel, and in the present case the diesel, as raw material for manufacture of goods by him at concessional rate of tax

under Sub-section (1).

Sub-section (3) specifically excluded raw material from the application of sub-section (3) and, therefore, specific words “other than raw material” have been used in Sub-Section (3) of Section 10 of the Act of 1994 itself. Therefore, even if the goods which are used for generation or distribution of electricity but are not covered under Sub-section (34) of Section 2 and entered as raw material in the registration certificate of the dealer than such goods are not covered under Sub-section (3) of Section 10 of the Act of 1994.

In view of the above reasons and in view of the fact that in the present case in the dealer's registration certificate, diesel has been shown as raw material for use in the manufacturing process of goods, there is no error of law in the view taken by the Tax Board.

The Tax Board and the Dy. Commissioner (Appeals) were right in holding that the assessee was liable to pay tax only in accordance with Section 10(1) of the Act of 1994.

Another question with respect to tax on packing material is concerned, learned counsel for the petitioner also agrees that it is covered by the

judgment of the Hon'ble Supreme Court in the case of ACTO vs. M/s. M.B. & Co. (Civil Appeal No.6885/2000) reported in Tax World XXVIII page 494.

In view of the above reasons, I do not find any merit in this revision petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya